IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 20851 of 2007(G)

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AGAINST THE ORDER IN IA NOS.1173/06 &1174/06 IN OS.391/1997 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

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AMBIKA, D/O RAJAMMA,
AMBIKA BHAVAN, NETTAYAM, VATTIYOORKAVU.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

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VILASINI, D/O AMMUKUTTY,
KRISHNA NIVAS, T.C.17/1702,
POOJAPPURA.

BY ADV. SRI.P.RAMESAN (KANIAPURAM)
SRI.N.R.SURESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX**

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER IN I.A. NO. 1174/2006 IN I.A.NO. 1173/2006 IN O.S. NO. 391/95 DATED 26.09.2006.

/True Copy/

P.A to Judge.

M.N. KRISHNAN , J

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W.P.(C) NO. 20851 OF 2007

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Dated this the 16th day of August, 2007.

**JUDGMENT**

This writ petition is filed seeking a direction to set aside the order Ext.P1. A brief reference to the facts are necessary for appropriate appreciation of the matter. The petitioner herein is the defendant in O.S. No. 391/97. The defendant entered appearance and he filed a written statement on 17.12.1999. The suit was decreed on 19.07.2001. To set aside the exparte decree, I.A No. 3068/2001 was filed. It was dismissed for non prosecution on 18.12.2002. Then to restore that application I.A No. 376/2003 was filed on 17.01.2003. The said petition was dismissed on 22.01.2005 again for default. Then the petitioner moves two applications I.A. Nos. 1173/06 and 1174/06 to restore I.A. No. 376/2003 with a petition to condone the delay of 373 days in filing that application. So a suit which was decreed exparte as early as on 2001 is attempted to be restored by setting aside the exparte decree by filing innumerable number of applications at each and every stage. The court below found that there are no proper explanations and no evidence to show that the petitioner and her husband were living separately. There is also no evidence adduced

to show that it was a collusive suit. So the court found the attempt is only to block the execution of the proceedings which is nearing completion. This is a case where the conduct of the party itself manifestly reveals the gross negligence and grave misconduct in prosecuting the case. I am conscious of the fact that the broad principles of natural justice normally requires an opportunity to be heard but with a rider provided the party is not grossly negligent or guilty of grave misconduct. This is a classical case where there is gross negligence and grave misconduct and therefore the court is not expected to use its discretion in such cases to put the winning party into the loosing position. Therefore, I do not find any ground to interfere with a decision rendered by the court below and the writ petition is dismissed.

**M.N. KRISHNAN, JUDGE.**

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